

**IN THE MATTER OF:**            *The Regulated Health Professions Act*  
   **S.M. 2009 c. 15**

**AND IN THE MATTER OF:**    **An Inquiry Committee Panel into the Conduct of**  
   **Brittany Marius, CRNM #147031**

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## **DECISION AND REASONS**

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Registered Nurses  
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## **DECISION AND REASONS**

**Inquiry Committee Panel Members:** Brenda Sullivan, Chair  
Michael Blackburn  
Carol Renner  
Anne-Marie Brown  
Evelyn Mayor (attended by videoconference)

**Counsel to and representative of  
the Complaints Investigation  
Committee (“CIC”):**

William G. Haight  
Phillips Aiello Barristers & Solicitors  
Denise Nakonechny  
CRNM Manager of Professional Conduct

**Registrant:** Brittany Marius

**Counsel to the Registrant:** Greg Bartel  
Myers LLP

**Counsel to the Panel:** Jeff Hirsch K.C.  
Thompson Dorfman Sweatman LLP

### **Introduction**

1. On Monday, January 22, 2024, an Inquiry Committee Panel (the “Panel”) of the College of Registered Nurses of Manitoba (the “College”) held a hearing into charges against a registrant of the College, Brittany Marius (the “Registrant”).
2. At the commencement of the hearing, it was established that the Notice of Hearing dated June 27, 2023 (the “Notice”), had been properly served and the jurisdictional requirements set forth in subsections 102(3), 116(2), 116(4), and 120(1) of The Regulated Health Professions Act (the “RHPA”) had been met.
3. No objections were raised as to the composition of the Panel and the Panel proceeded to hear the matter.

4. The Registrant appeared at the hearing with legal counsel and pled guilty to counts 1 and 2 in the Notice, namely that:

between September 18, 2021 and October 7, 2021, while employed as a Registered Nurse at [REDACTED] the Registrant improperly accessed the Electronic Patient Records (“EPRs”) of 63 patients who were not receiving care from them and who were never admitted to the [REDACTED]; and

(a) between September 18, 2021 and October 8, 2021, while employed as a Registered Nurse in the [REDACTED], the Registrant improperly accessed the EPRs of 25 patients who were not receiving care from them. These 25 patients were admitted to the [REDACTED] but were never admitted to the [REDACTED].

5. The Registrant admitted that their conduct constituted professional misconduct.

6. The Panel heard submissions from counsel for the College’s Complaints Investigation Committee (the “CIC”), describing the background facts giving rise to the matter raised in the Notice.

7. The parties made a joint recommendation as to disposition of the matter and suggested a two-week suspension and a \$4,000 contribution to costs.

8. After hearing those submissions, the Panel briefly adjourned to consider the joint recommendation and then advised it was prepared to accept the joint recommendation with written reasons to follow. These are those reasons.

## **Facts**

9. The following facts are not in dispute.

10. The Registrant has been a Registered Nurse (“RN”) since November 2012.

11. The Registrant was employed as a Registered Nurse at the [REDACTED].

12. Between approximately September 18, 2021, and October 8, 2021, they improperly accessed the Electronic Patient Records (“EPRs”) of 57 patients (six less than referred to in Count 1) who were either not receiving care or were admitted to the [REDACTED] but were never admitted to the [REDACTED].

13. The Registrant did not disclose any of the personal health information they improperly accessed.

14. The Registrant had a previous instance of snooping in patient records, for which their employer had provided the Registrant with additional education on *The Personal Health Information Act* (the “PHIA”) and the importance of confidentiality.

15. Based on the improper access of September/October 2021, on April 8, 2022, the Registrant was issued a five-day suspension by her employer for the improper access and the PHIA breach.

16. On April 19, 2022, in accordance with its mandatory reporting obligations under the RHPA, the employer reported the Registrant’s suspension to the College.

17. The CIC accepted the Registrant's offer to voluntarily surrender their certificate of practice on May 19, 2022.
18. The Registrant's certificate of practice was reinstated on October 5, 2022, at which time they returned to work until they commenced [REDACTED]. Their return to work was without incident and no performance concerns were identified by the employer.
19. The Registrant has no previous discipline history.
20. The Registrant entered a plea of guilty to professional misconduct and, through their legal counsel, agreed to submit a joint recommendation on penalty with counsel for the CIC.

## **Analysis and Decision**

21. Registered nurses are in a position of trust. Confidentiality and privacy are cornerstones of nursing practice. The public rightfully expects no less.
22. The obligations on a registered nurse with respect to the confidentiality of personal health information are very clear and should be understood by and ingrained in an RN by their first day of practice. At time of this misconduct, the Registrant had been practising for 10 years.
23. The College's *Entry-Level Competencies for the Practice of Registered Nurses* ("ELC") expressly state that registered nurses are to uphold the profession's practice standards and ethics and are accountable to the public and the profession. ELC 2.1 requires registered nurses to maintain "client privacy, confidentiality, and security by complying with legislation, practice standards, ethics, and organizational policies.
24. The *Code of Ethics for Registered Nurses* (the "Code of Ethics") contains the following provisions:

- A. Providing Safe, Compassionate, Competent and Ethical Care

Nurses provide safe, compassionate, competent and ethical care.

Ethical responsibilities:

1. Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care and other members of the health-care team.

- D. Honouring Dignity

Nurses recognize and respect the intrinsic worth of each person.

Ethical responsibilities:

7. Nurses maintain appropriate professional boundaries and ensure their relationships are always for the benefit of the person. They recognize the potential vulnerability of persons receiving care and do not exploit their trust and dependency in a way that might compromise the therapeutic relationship. They do not abuse their relationship for personal or financial gain and do not enter into personal relationships (romantic, sexual or other) with persons receiving care.

### **E. Maintaining Privacy and Confidentiality**

**Nurses recognize the importance of privacy and confidentiality and safeguard personal, family and community information obtained in the context of a professional relationship.**

Ethical responsibilities:

1. Nurses respect the interests of persons receiving care in the lawful collection, use, access and disclosure of personal information.

2. When nurses are conversing with persons receiving care, they take reasonable measures to prevent confidential information in the conversation from being overheard.

**3. Nurses collect, use and disclose health information on a need-to-know basis with the highest degree of anonymity possible in the circumstances and in accordance with privacy laws.**

**7. Nurses respect policies that protect and preserve the privacy of persons receiving care, including security safeguards in information technology.**

**8. Nurses do not abuse their access to information by accessing health-care records, including those of a family member or any other person, for purposes inconsistent with their professional obligations.** When using photo, video or other technology for assessment, diagnosis, planning, implementation and evaluation of persons receiving care, nurses obtain their consent and do not intrude into their privacy. They handle photos or videos with care to maintain the confidentiality of the persons involved, including colleagues and students.

### **G. Being Accountable**

**Nurses are accountable for their actions and answerable for their practice.**

Ethical responsibilities:

**1. Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the Code and in keeping with the professional standards, laws and regulations supporting ethical practice.**

(emphasis added)

25. In addition, the College's *Practice Direction: Practice Expectations for Registered Nurses* (the "Practice Direction") in place at the time stipulates that registered nurses are accountable and responsible to demonstrate professional behaviours, attributes and values (indicator 2). Registered nurses are to demonstrate understanding of all applicable legislation governing registered nursing practice (including PHIA – indicator 1). Registered nurses must practise in accordance with the values outlined in the Code of Ethics (indicator 19) and demonstrate accountability and responsibility in protecting personal health information (indicator 13).

26. The Panel reiterates that any improper access of patient records is unacceptable, regardless of the motivation, and such access constitutes professional misconduct.

27. The Panel finds that the facts submitted establish that the Registrant is guilty of professional misconduct and has contravened the Practice Direction, the Code of Ethics and the PHIA as alleged in counts 1 and 2 of the Notice. The Registrant acknowledged and admitted that their conduct amounted to professional misconduct.

28. Subsection 124(1) of the Act authorizes the Panel to make any finding permitted under subsection 124(2) which includes that an investigated member has breached the Code of Ethics or Standards or is guilty of professional misconduct.

29. The authority of a Panel to make sentencing orders, and orders related to costs are found in sections 126 and 127 of the Act.

30. In reaching its decision, the Panel acknowledges the submissions of counsel to the CIC and counsel for the Registrant and was mindful of the objectives of such orders which have been articulated by various authorities.

31. In *The Regulation of Professions in Canada*, Carswell 2021, James T. Casey describes the purpose of sentencing in professional discipline cases, citing *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 (at page 376):

[W]here the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest...

32. Citing *McKee* and a number of other authorities, Casey goes on to list the factors in determining how the public is protected including:

... specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the member, punishment of the offender, ..., the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members and ensuring that the penalty imposed is not disparate with penalties in other cases.

33. When determining an appropriate penalty, in accordance with *Jaswal v. Medical Board (Nfld.)* 1996 CanLII 11630 (NLSC), the Panel considered the following factors:

- (a) the nature and gravity of the proven allegations;
- (b) the experience of the Registrant;
- (c) the absence of any prior discipline history;
- (d) the number of times the offence was proven to have occurred;
- (e) the role of the Registrant in acknowledging what had occurred;
- (f) the presence or absence of any mitigating circumstances;
- (g) the need to promote specific and general deterrence and, thereby, to protect the public;
- (h) the need to maintain the public's confidence in the integrity of the profession; and,
- (i) the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct the range of sentence in other similar cases.

34. Several factors may serve to mitigate the severity of an appropriate penalty in a particular case. As noted by Casey in his text, these include:

- (a) the attitude of the [Registrant] since the offence was committed, with a less severe punishment being justified where the individual genuinely recognizes that their conduct was wrong;
- (b) the age and inexperience of the [Registrant] at the time the offences were committed;
- (c) whether the misconduct was a “first offence” for the [Registrant];
- (d) whether the [Registrant] pleaded guilty to the charges of professional misconduct, which may be taken as demonstrating the acceptance of responsibility for their actions; and
- (e) the good character of the member.

35. In this case, the Panel noted the following aggravating factors:

- (a) accessing personal health information is an extremely serious breach of trust and breach of integrity; and
- (b) this was the second episode of improper access to personal health information.

36. The Panel also took into consideration the following mitigating factors, noting that the Registrant:

- (a) has no previous discipline/complaints history;
- (b) did not disclose any of the improperly accessed personal health information;
- (c) accepted responsibility for their actions and apologized for their conduct;
- (d) voluntarily withdrew from practice and cooperated with the College’s investigation;
- (e) pled guilty to all charges thereby saving the time and expense of a protracted disciplinary hearing; and
- (f) has taken accountability for their misconduct and is genuinely remorseful.

37. Counsel for the CIC provided the Panel with several similar cases involving professional misconduct. In particular, the Panel was referred to a trilogy of the College’s Inquiry Committee decisions involving breaches of the PHIA: (*Rerick* (November 3, 2022), *Grenkow* (December 2, 2022), and *Nguse* (January 30, 2023).

38. Counsel for both parties made oral submissions at the hearing to the effect that the sanction being jointly recommended is consistent with those previously imposed on registered nurses.

While all three cases bore some similarity to the circumstances of this case, there is a significant distinguishing factor here as noted by counsel. At the time of the misconduct, [REDACTED] [REDACTED] [REDACTED]. This [REDACTED] was considered by the Panel to be a specific mitigating factor and supportive of a reduction in the period of suspension.

39. The parties jointly submitted that the Registrant be issued a two-week suspension and be ordered to pay a contribution to the College’s costs in the amount of \$4,000.00 (the “Joint Recommendation”).

40. In *Anthony Cook v Her Majesty the Queen*, 2016 SCC 43 (“*Anthony-Cook*”), the Supreme Court of Canada confirmed that an adjudicator may reject and depart from a joint recommendation on penalty only where the proposed

disposition would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

41. At paragraph 34 of that decision, the Court described this as an “undeniably high threshold”, writing:

[A] joint submission should not be rejected lightly... Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

*R v Anthony-Cook*, 2016 SCC 43 at para 34

42. Though the principles in *Anthony-Cook* were articulated in the context of a criminal prosecution, the “public interest test” has been adopted by healthcare regulators and regulators of other self-governing professions in Manitoba.

*Re Pillay*, 2018 Carswell Man 223 at para 48

43. The Panel is satisfied that the Joint Recommendation is in line with prior decisions, properly addresses and protects the public interest, and achieves the purpose of:

- (a) providing general deterrence to all registered nurses that this type of conduct will be investigated, reviewed, and punished; and
- (b) reassuring the public that the College is working to maintain standards and ensure continued trust in registered nurses.

44. The Panel accepted the parties’ submissions that the Registrant’s need for specific deterrence was significantly lessened in light of their acknowledgment, apology, and remorse.

45. The Panel was mindful that the College must protect and serve the public interest through quality registered nursing regulation. The public must have confidence in the profession. The College can maintain this confidence by overseeing the conduct of its members appropriately and consistently, and by inquiry panels imposing a serious sanction where appropriate to deter serious misconduct.

46. The Panel has therefore accepted the guilty plea and the parties’ joint recommendation and makes the following Order:

- (a) The Registrant is hereby suspended from practice for two weeks effective March 11, 2024;
- (b) The Registrant is to pay costs to the College in the amount of \$4,000.00; and,
- (c) There will be publication of the Decision and Reasons.

DATED at Winnipeg, Manitoba, the 14<sup>th</sup> day of February 2024.





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]